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March 28, 2006

The Honorable Public Utilities Commission
of the State of Hawaii
Kekuanao'a Building, First Floor
465 South King Street
Honolulu, Hawaii 96813

FILED
2006 MAR 28 A 11:43
PUBLIC UTILITIES
COMMISSION

Re: Tesoro Hawaii Corporation, Docket No. 05-0002;
Comments to ICF Recommendations for the Ethanol Mandate

To the Honorable Public Utilities Commission of the State of Hawaii:

Tesoro Hawaii Corporation, a Hawaii corporation, ("Tesoro Hawaii") respectfully submits the enclosed confidential comments to *Recommendations to Modify Hawaii Revised Statutes Chapter 486H, Gasoline Price Cap Legislation, for the Ethanol Mandate, Hawaii Administrative Rules, Title 15, Chapter 35* ("ICF Ethanol Recommendations").¹ The attached confidential comments contain confidential information to be viewed only by the Commission and the Consumer Advocate pursuant to the requirements of Protective Order No. 21669, filed on March 1, 2005.

Hawaii's ethanol blending law requires "at least eighty-five per cent of all gasoline supplied to a retailer, sold at retail, or sold to a private, state, or municipal fleet for use in motor vehicles, and intended as a final product for fueling motor vehicles in the State of Hawaii, shall contain ten per cent ethanol by volume."² The law goes into effect in April of 2006.

A. General Non-Confidential Comments to ICF Ethanol Recommendations:

As stated in *Tesoro Hawaii Corporation's Response to Order No. 22056*, Tesoro Hawaii has testified in support of ethanol if in-state production is on line and there is a benefit to the State.³ Tesoro Hawaii continues to believe that government-dictated gasoline price caps do not work and that restoration of the free market, not the addition of more price caps, is the best policy to allow the recovery of costs associated with the ethanol mandate. The Company supports the intent of local renewable fuels legislation that reduces the State's dependence on imported oil. Notwithstanding this support, the Commission's independent consultant makes the following abundantly clear: the Ethanol Mandate, especially as it pertains to imported ethanol,

¹ ICF Consulting, LLC, *Recommendations to Modify Hawaii Revised Statutes Chapter 486H, Gasoline Price Cap Legislation, for the Ethanol Mandate, Hawaii Administrative Rules, Title 15, Chapter 35*, (March 23, 2006).

² Haw. Admin. R. § 15-35-3 (2004); see also Haw. Rev. Stat. § 486J-10 (hereinafter referred to as the "Ethanol Mandate").

³ *Tesoro Hawaii Corporation's Response to Order No. 22056*, Docket No. 05-0002 (filed Nov. 1, 2005) at 14.

will increase the cost of gasoline in Hawaii. Tesoro Hawaii has reservations that local ethanol production will produce the benefit that the State expects in the form of increased agricultural market opportunities and reduced fuel costs for the consumer, but will reserve comments until local ethanol producers are on-line.

ICF's study states, "The current market outlook for ethanol price leads ICF to conclude that the nearer term effect on the Hawaii gas cap is for a substantive increase."⁴ Thus "ICF estimates that the recommendations in[its] report at the current ethanol and HIBOB [Hawaii Blendstock for Oxygenate Blending] market prices will result in E-10 gasoline price caps *increasing above conventional gasoline price caps* by 5-8 cpg in the zones selling E-10 gasoline."⁵

The ICF Ethanol Recommendations recognize the following key points:

- there is no ethanol production in Hawaii and all ethanol must be imported from foreign or domestic sources;
- ethanol cannot be blended at the refinery but must be stored, segregated, and shipped separately from the gasoline it will be blended with;
- operational changes are necessary to produce a blendstock that can meet gasoline standards when blended with ethanol into trucks;
- parties⁶ are spending more than \$35 million to prepare the distribution system to accommodate ethanol;
- product must be barged to other zones and internally in Oahu, and trucked from terminal to terminal;
- because of the length of the ethanol supply chain, parties are having to increase inventory in Hawaii in case there are any ethanol supply disruptions; and
- Hawaii's refineries will incur costs to either reduce gasoline production or export gasoline or gasoline blendstocks, since there will be less demand for the refinery's gasoline product as a result of the Ethanol Mandate.⁷

ICF correctly observes, "The market is clearly volatile, and at the current time ethanol supply is tight in the markets where Hawaii's oil industry must secure product." While acknowledging that there has been occasion in the past when ethanol prices declined, ICF

⁴ ICF Ethanol Recommendations at 35.

⁵ *Id.* at 5 (emphasis added).

⁶ The term "parties" do not include just refiners, but also jobbers, truckers, transporters, and other wholesalers involved in bringing petroleum to Hawaii consumers.

⁷ ICF Ethanol Recommendations at 4.

cautions, “The actual cost of ethanol delivered into Hawaii as compared to the baseline price of gasoline, and market indications are that *future ethanol cargoes could be 40 or more cpg higher* than initial cargoes....”⁸ Although, as discussed in the confidential attachments, Tesoro Hawaii disagrees that some of the specific numbers arrived at by ICF accurately reflect the cost of the Ethanol Mandate, generally, Tesoro Hawaii agrees with ICF’s assessment—the price of gasoline to the Hawaii commuter will increase.

B. Confidential Comments:

The enclosed confidential comments to the ICF Ethanol Recommendations are comprised of internal Tesoro Hawaii proprietary information, data, analysis and/or computations. Tesoro Hawaii considers the entirety of the enclosed confidential comments to be confidential, business sensitive, trade secrets, commercial and proprietary information the disclosure of which would: (1) disadvantage Tesoro Hawaii because it touches upon Tesoro Hawaii’s and/or its customers’ privacy, (2) violate certain laws regulations and guidelines, (3) violate the terms and conditions of non-disclosure agreements with consultants or other third parties, (4) directly or indirectly give another Party or person not a party to these proceedings information which the Party or person, could use to its competitive advantage and/or the competitive disadvantage of Tesoro Hawaii and/or Tesoro Hawaii’s customers. The confidential information that comprises the attached confidential comments is not information that Tesoro Hawaii would normally disclose to its competitors, customers or suppliers and is not to be distributed. Tesoro Hawaii considers the attached confidential comments to contain sensitive information that should not be copied by anyone.

Tesoro Hawaii respectfully reserves the right to supplement its comments on a continuing basis as new information becomes available. Concurrently with the filing of the confidential comments to the ICF Ethanol Recommendations with the Commission, Tesoro Hawaii is delivering a copy containing the confidential information to the Consumer Advocate.

Because of the impending deadline for implementation, only a few days away, Tesoro Hawaii appreciates the expeditious work of ICF Consulting, LLC, as it strives to recommend a fair approach to the Commission addressing the many impacts of the Ethanol Mandate on Hawaii’s consumers and petroleum industry. Tesoro Hawaii appreciates the Commission’s consideration of the comments of industry participants in its important decision-making.

⁸ *Id.* at 5, 36 (emphasis added).

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Please feel free to contact Craig Nakanishi if you have any questions regarding this submission.

Sincerely,

RUSH MOORE LLP
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A handwritten signature in black ink, appearing to read "Shah J. Bento". The signature is fluid and cursive, with the first name "Shah" and last name "Bento" clearly distinguishable.

Craig I. Nakanishi
Shah J. Bento
Attorneys for
Tesoro Hawaii Corporation

cc: Consumer Advocate (w/encl)
Chevron U.S.A. Inc. (w/o encl)
Shell Oil Company (w/o encl)
Hawaii Petroleum Marketers Association (w/o encl)